



DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND
1777 HARDEE AVENUE SW
FORT MCPHERSON GEORGIA 30330-1062

REPLY TO
ATTENTION OF

AFLG-PROM

4 June 1997

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Contracting Information Letter (CIL) 97-30

1. This CIL contains information on the following subjects:
 - a. ASBCA Decision Regarding Superfund Tax,
 - b. Delegation of Authority to Award Protest Costs,
 - c. Contacts by Former Senior Officers or Employees Seeking Information or Other Assistance,
 - d. ASBCA Decision: Recovery of Contract Award Fees,
 - e. Savings from Acquisition Reform,
 - f. Delegation of Authority to Approve Contract Awards and Contracts for Expert, Consultant, and Stenographic Reporting Services,
 - g. Criminal Abuse of the IMPAC Credit Card Program, and
 - h. Travel Vouchers from DAU Training.
2. ASBCA Decision Regarding Superfund Tax. In the case of Rockwell International v. Widnall, the Court of Appeals for the Federal Circuit, April 1, 1997; Docket No. 96-1265; 1997 WL 144738 rendered a decision that the Superfund Tax (26 USC 59A) is not an allowable cost for years prior to 1991. We ask Contracting Officers to examine pending cost proposals to determine if it contains this unallowable Superfund Tax and assess the impact on contractors and potential recovery for the Government. Please contact Julie Grace, DSN 367-5690, if you have any questions.
3. Delegation of Authority to Award Protest Costs. At enclosure 1 is the redelegation which allows the PARC to approve payment of costs to a protestor when the

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solicitation or award of a contract does not or would not comply with statute or regulation (i.e., the Government would lose the protest). For additional information, please contact Alan Schantz at DSN 367-6227.

4. Contacts by Former Senior Officers or Employees Seeking Information or Other Assistance. An excellent article by Mr. Michael J. Wentink of the Standards of Conduct Office, Office of the Judge Advocate General, regarding contacts with former senior officials is provided at enclosure 2.

5. ASBCA Decision: Recovery of Contract Award fees.

a. A recent U.S. Court of Appeals decision establishes that the ASBCA and the Federal Appeals Courts have jurisdiction under the Contract Disputes Act to hear disputes over award fee issues. Excerpts from the decision, Burnside-Ott Aviation Training Center vs. Secretary of the Navy, is provided at enclosure 3.

b. Despite the provision at FAR 16.405(e), which "excludes from the operation of the Disputes clause any disagreement by the contractor concerning the amount of the award fee", the ASBCA and the Federal Court may consider award fee disputes, but the extent of the review may be limited to ascertaining whether actions taken by the Government are reasonably justified. In other words, the court will typically honor the Agency's right to make a Unilateral Award Fee Determination decision, so long as it is not arbitrary, capricious, or an abuse of discretion.

c. This case effectively voids Agency use of any language indicating that Award Fee Determinations, "... are not subject to the Disputes clause", since now, under Burnside-Ott, they may be subject to it under certain circumstances. For additional information, please contact Joan Sylvester at DSN 367-6237.

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6. Savings From Acquisition Reform.

a. Reference memo, SARD-PI, dtd 21 February 1997, SAB (encl 4).

b. Additional copies of USAA Audit Report #AA 97-58 have been requested and will be provided to you upon receipt. When using this report to make manpower strength decisions, it should be noted that any purchase card savings in the contracting functional area within FORSCOM have already been garnered. The savings of \$92.60 is based on making a purchase card transaction versus issuing a purchase order. The audited savings did not include the responsibilities of the Agency Program Coordinator. The savings by activity are broken out on page 16 of the audit. Additional savings using streamlined procedures are shown on page 17.

7. Delegation of Authority to Approve Contract Awards and Contracts for Expert, Consultant, and Stenographic Reporting Services. The delegation adding contracting for the services of interpreters, guides, and drivers for performance outside the United States in support of contingency operations and humanitarian or peacekeeping missions is provided at enclosure 5. For additional information, please contact Alan Schantz at DSN 367-6227.

8. Criminal Abuse of the IMPAC Credit Card Program.

a. The results of recent U.S. Army Criminal Investigation Command (USACIDC) investigations into criminal abuse of the U.S. Army International Merchant Purchasing Authority Cards (IMPAC) clearly indicate the need for increased leadership involvement in the oversight of this program. A copy of the audit is provided at enclosure 6.

b. As a result of a crime deterrence initiative to review IMPAC card purchases at four installations, the USACIDC initiated 18 investigations of criminal abuse involving hundreds of thousands of dollars. The criminality

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included primarily fraudulent purchases and unauthorized split purchases. Another \$1.4 million in expenditures appears questionable and additional investigations are expected to be initiated at these four installations.

c. The IMPAC Credit Card Program was instituted to ease the administrative burden associated with routine procurement actions. The program is deliberately designed to require separation of management responsibilities for requesting, approving, and actually making purchases. Periodic audit and review requirements are intended to further minimize the potential for fraud, waste, and abuse. None of these safeguards will be effective unless vigorously implemented in compliance with applicable law and Army regulations. Noncompliance with established procedures appears to have been a primary causative factor in all of the incidents mentioned above.

d. Effective immediately, all FORSCOM IMPAC training classes shall include instruction on fraud, waste, and abuse; property accountability; and splitting requirements. We encourage participation by counsel, contracting officers, and DOL property book officers. Implementation of DoD Micropurchase Best Business practices, particularly the new certifying officer liability, should further reduce potential for abuse of established IMPAC procedures.

e. For additional information, please contact Pat Boterweg at DSN 367-5486.

9. Travel Vouchers from DAU Training.

a. Travel vouchers to be processed as a result of DAU training with an ending accounting classification of 044008 should be sent to:

DFAS OPLOC Rome
ATTN DFAS RO FPT
124 Chappie James Blvd
Rome NY 13441-4520

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b. Also, do not forget to provide a copy of the processed travel voucher within 5 days of receipt to Ms. Vickie Phelps at RDAISA, fax no. DSN 931-3568. For additional information, please contact Clyde Thomas at DSN 367-6372.



6 Encls
as

TONI M. GAINES
Chief, Contracting Division, DCSLR
Principal Assistant Responsible
for Contracting

DISTRIBUTION:

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I CORPS & FT LEWIS, P.O. BOX 33931, ATTN: AFZH-DOC
3RD INF DIV (MECH) & FT STEWART, ATTN: AFZP-DC
101ST ABN DIV (AASLT) & FT CAMPBELL, ATTN: AFZB-DOC
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10TH MTN DIV, FT DRUM, ATTN: AFZS-DOC
COMMANDER AND FT MCCOY, ATTN: AFRC-FM-DC
NATIONAL TRAINING CENTER & FT IRWIN, ATTN: AFZJ-DC
ARMY ATLANTA CONTRACTING CENTER, ATTN: AFLG-PRC



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REPLY TO
ATTENTION OF

AFLG-PR (715)

27 May 97

DELEGATION OF AUTHORITY TO AWARD PROTEST COSTS

1. As Head of Contracting Activity (HCA) Forces Command, I redelegate authority to the Principal Assistant Responsible for Contracting (PARC) to make agency head determinations for those actions described in Federal Acquisition Regulation (FAR) 33.102(b)(1) and (b)(2).
2. This delegation applies to both protests filed with the agency and protests filed with the General Accounting Office for which the Comptroller General has not made a decision.
3. Actions taken pursuant to this delegation of authority shall be consistent with 10 U.S.C. 2305(f), 31 U.S.C. 3554, and FAR Part 33.
4. Contracting officers shall attempt to reach an agreement on the amounts of costs to be paid to a protester or an interested party. If no agreement can be reached, delegees under this delegation may, at the request of the protester or an interested party, make the final agency determination of the amount the contracting officer will pay. Officials shall consult legal counsel in exercising this authority.
5. This delegation is effective immediately and is valid until specifically rescinded or superseded and may not be further redelegated.

DAVID A. BRAMLETT :
General, USA
Commanding

2 May 1997

SARD-97-1

DELEGATION OF AUTHORITY TO AWARD PROTEST COSTS

DELEGATION OF AUTHORITY. Except for the Army Materiel Command and the Corps of Engineers I hereby delegate to Heads of Contracting Activities the authority to make agency head determinations and act for the agency head regarding those actions described in Federal Acquisition Regulation (FAR) 33.102 (b) (1) and (b)(2).

This delegation applies to both protests filed with the agency and protests filed with the General Accounting Office but for which the Comptroller General has not made a decision.

This authority may be redelegated no lower than the Principal Assistant Responsible for Contracting, the Chief of their supporting legal office, or the official designated as the independent review authority in accordance with FAR 33.103(d)(4).

Actions taken pursuant to this delegation of authority shall be consistent with 10 U.S.C. § 2305(f), 31 U.S.C. § 3554, and FAR Part 33.

Contracting officers shall attempt to reach an agreement on the amounts of costs to be paid to a protester or an interested party. If no agreement can be reached, delegates under this delegation may, at the request of the protester or an interested party, make the final agency determination of the amount the contracting officer will pay. Officials shall consult legal counsel in exercising this authority.

EFFECTIVITY. This delegation is effective upon signature and is valid until specifically rescinded or superseded.

// signed //
Gilbert F. Decker
Assistant Secretary of the Army
(Research, Development and Acquisition)

ARTICLE

**Contacts by Former Senior Officers or Employees
Seeking Information or Other Assistance
Mr. Michael J. Wentink
Standards of Conduct Office
Office of The Judge Advocate General**

Periodically, Army employees seek the advice of their Ethics Counselors because a former officer or employee has contacted them and is seeking information or other assistance. Many times, this contact comes from a former senior Army official who may even have been the employee's commander or supervisor before he or she left Government service. As a result, they feel somewhat compelled or even pressured to respond as if that senior official was still in Government service.

This article is written to explain the ethical issues and parameters of such contacts.

You or any other agency employees who are contacted by a former officer or employee, such as a retired General Officer, for information or other assistance, need to ask and answer two questions:

- (1) Does this contact violate any of the post-Government employment restrictions?
- (2) Is it appropriate to provide the information or other assistance as requested?

Part I--Basic Restrictions on Contacts

Your first concern should be whether the former official should be making the contact at all. There are criminal restrictions on certain types of contacts by former Government personnel. The most relevant are as follows:

- (1) For one year after leaving Government service, all former General Officers, members of the Senior Executive Service (Levels V and VI), and other former senior officials are prohibited from making any contact with or appearance before any official of the Government agency in which they served in their last year, to attempt to influence any official action on behalf of someone else. If the senior official was paid at Level I of the Executive Schedule, the restriction is even broader.
- (2) All former officers and employees, regardless of their rank, are prohibited forever from "switching sides" and representing someone else to attempt to influence official Government action concerning any particular

matter involving a specific party in which they participated personally and substantially as a Government officer or employee. The prohibition lasts for only 2 years if they did not participate in this particular matter, but they were supervising the action, i.e., it was under their official responsibility.

(3) In addition, most senior appointees have taken a pledge not to lobby any officer or employee of their agency for 5 years after they leave Government service. Not all contacts with Army officials will be criminal or violate the pledge, not even those by a former senior Army official during his first year after leaving Army service. For the contact to be improper, representation of someone (e.g. contractor, consultant, labor union, professional association, or some other private organization) is required, along with an attempt to influence an official Army action.

A former officer or employee contacting you to merely seek information, even information that relates to a particular matter with which he/she was involved as an Army officer or employee, might not violate the strict letter of the law. However, you might want to consider that "discretion is oft times the better part of valor" and discourage such contacts to avoid inappropriate appearances. Contacts like these, especially those by former senior officers and employees during their first year after leaving the Government, could result in embarrassment or worse, such as Inspector General or criminal investigations, contract protests or suspension and debarment actions, and other litigation. The closer to the "line," the more likely that there will be unwanted issues.

Because of this, ethics attorneys routinely advise former senior personnel, for the first year after leaving the Army and government service, not to attend symposia and similar gatherings where active duty Army personnel are sure to congregate. We also suggest that they generally avoid most other contacts with Army personnel during this first year; but, if they must, they need to ensure that the circumstances that make the contact legally correct are clear. Some legal contacts are: purely social activities; dealings to help conclude an official matter that may have been left hanging on departure; or an overture to suggest that the former senior employee, in his or her personal capacity, be put on contract (here, the former employee is representing him or herself, not someone else).

Part II--Contacts Seeking Information

One value of former Army officials to their new employers is their knowledge of the Army: its systems and processes, its personnel, and how to obtain and interpret information. However, former Government officials are required to protect and not exploit classified, proprietary, contractor bid or proposal, and other "inside information" (i.e., information obtained as part of his Government position, which the Army would not release to the public under the Freedom of Information Act (FOIA)). Beyond that, they are free to market and use this valued experience for their own benefit and that of their new employers.

However, one of the capabilities that former Army officials may not, or should not, attempt to market to their new employers is access! As a practical matter, retired senior officers or former officials certainly do have access to former colleagues and offices. As retired officers, they have access to military installations and organizations. Retired General

Officers have even more access to current officials and information, even briefings, so that they are prepared to work with and assist the Army in the event of an emergency. Notwithstanding this legitimate access, former Army officials may not use, exploit, or market this access to their civilian employer.

What if they do and they use their former positions to gain access to current Army officials and information that would not otherwise have been available to the public? Unless they do something illegal, such as violating the procurement integrity law, they are not subject to personal sanction. However, the current Army officials they approach and from whom they receive preferential treatment certainly are. The former Government employee puts the current employee at risk of being disciplined. In some cases, the result can be litigation that delays the agency action and the only winners are the lawyers.

Army officials' exposure for giving preferential treatment by providing information to former officials includes the following possible violations:

- . Not adhering to basic obligations of public service as set out in Executive Order 12674.
- . Use of public office for the private gain of friends or others with whom the employee is affiliated, or inducing others, such as subordinates, to provide some benefit to persons with whom the official is affiliated in a private capacity.
- . Use of nonpublic information to further someone else's private interest, whether through advice or recommendation, or by knowing unauthorized disclosure.
- . Unauthorized release of information protected by the Procurement Integrity law.

When a former officer or employee wishes to meet with you or asks you for information, it is your responsibility to ensure that honoring the request will not violate law or regulation. In addition, you should also ensure that those who work for you, especially those who might be intimidated by a request, which sounds like a demand, from a former high-ranking official, understand that it is not only permissible, but expected of them, to question the validity of responding to the request if they have any doubt. They should be encouraged to seek the advice of their supervisor, commander, and Ethics Counselor.

Part III--"OK" and NOT "OK" Requests for Information

Here are some examples of "OK" requests for information and "NOT OK" requests for information. We assume that none of the post-Government employment restrictions apply that would "criminalize" the contact with you in the first instance.

- . "OK" Request. A retired officer contacts the Standards of Conduct Office to determine the ethics implications of a private organization's proposal to invite current active duty officers to participate in a fund-raising effort in support of an Army museum renovation. Any contacts to obtain ethics

information and advice are proper.

. NOT "OK." After being advised of the ethics implications of active duty officers participating in his organization's fund-raising effort in support of an Army museum, the retired officer requests research, analysis, and an opinion concerning how the Army authorizes and establishes museums on its installations. Although the retired General was entitled to assistance with the ethics issues, Government resources may not be used to provide him and his organization legal advice concerning Army rules and policies concerning the operation of its museums.

. "OK" Request. A retired officer contacts a program manager for a briefing on his program to assist the retired officer in performing a study and writing the report that the Army has contracted with his employer to do. This is a perfectly reasonable and routine request that we would honor in the normal course of business.

. NOT "OK." The retired officer requests the same briefing so that he can better understand the program as he helps his employer put together its proposal in response to the Army's request for proposals.

. "OK" Request. A former senior employee, 13 months after retirement, contacts an Army employee, a contracting officer who was one of her subordinates when she worked for the Army, and requests a meeting to try and resolve issues between her new employer and the Army concerning contract disputes that arose after she left her position. This contact involves dialogue and an exchange of information that would and should occur in the normal course of business. And the contracting officer needs to treat her fairly: no better and no worse because of the former employee's senior position with the Army.

. NOT "OK." The former senior employee attempts to circumvent the system and makes contacts with other employees to engender inappropriate or accidental disclosures of information, or to bring pressure to bear on the contracting officer. That is not to say that, as an executive in her new company, she cannot attempt to have the issues elevated within the appropriate channels in the Army for discussion and resolution. But, it would not be proper for her to attempt to have high-level Army officials bring pressure on the contracting officer to decide in her favor.

. "OK" Request. A retired senior officer contacts his former deputy to obtain information to brief the Chief of Staff, Army, (CSA) on an issue that arose after he retired on which the CSA requested his input. It would even be "OK" if it related to a matter that he was involved in prior to his retirement because there is no attempt to influence official action on behalf of someone else. It would even be "OK" if the retired officer was now employed by an Army contractor; however, now the appearances might be such that "discretion is the better part of valor," and it would be better if the meeting did not take place.

In summary, providing information or assistance is appropriate if, at the time of the request, you would readily release this information to any other member of the public, or there is some other official Army reason that the former official is entitled to the information. It is not appropriate to release information or provide assistance if the only reason is that the requester is a former colleague or senior official (the operative term

here is "former"). Even if it is appropriate to release the information, it is not appropriate to provide an analysis, create additional information, or do projections if you would not do the same for others; the requester may have been entitled to your research and analysis as his or her former subordinate or colleague, but not just because he or she is a former senior officer or employee. In addition to the various possible violations of law and regulation, such favoritism creates terrible appearances and impugns the integrity of Army operations.

When you receive a contact and request for official information or other action from a former Army official, if you have any doubt as to the appropriateness of the contact or how you should respond, you should seek the advice of your Ethics Counselor.

Attachment 1

EXCERPTS

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, 96-1227

BURNSIDE-OTT AVIATION TRAINING CENTER, Appellant,
v.

John H. Dalton, SECRETARY OF THE NAVY, Appellee.

Appealed from: Armed Services Board of Contract Appeals
DECIDED: February 1997

The Board denied Burnside-Ott's claim seeking recovery of contract award fees that Burnside-Ott alleges were improperly withheld by the Navy. Because the Board's decision lacks reversible error, we affirm.

The present dispute originated from a request for proposals (RFP) issued by the Navy on December 31, 1987, for a cost-plus-award-fee (CPAF) contract covering aircraft maintenance, repair, and overhaul at six naval air stations. Burnside-Ott was the recipient of the contract and received good performance ratings. Burnside-Ott's claim here centers on the government's calculation of the award fee pursuant to a conversion chart that was not included in the RFP or the contract.

Burnside-Ott's award fee was governed by clauses H-20 and H-21 of the RFP. Clause H-20 provided that the total available fee (base fee plus award fee) was not to exceed ten percent of total estimated costs. These amounts were later amended to a zero base fee with a ten percent total available fee. Clause H-20 also noted that the award fee was to be awarded on a quarterly basis, "based on a unilateral determination by the Government," and calculated as set forth by evaluation criteria in Clause H-21.

Clause H-21 listed "Performance Evaluation Report Criteria" with corresponding numerical ratings as follows:

0-60 Submarginal
61-70 Marginal
71-80 Average
81-90 Above Average
91-100 Excellent

The clause defined "Submarginal" performance as performance that "does not meet the contract minimum requirements and may result in termination." Clause H-21 also stated that the amount of the award fee was to be determined by the Fee Determining Official (FDO), and noted, in accordance with FAR 16.404-2(a): "The Award

Fee decision is a unilateral determination made by the FDO and is not subject to the 'DISPUTES' Clause of the contract."

Under FAR 16.405, "Contract Clauses," CPAF contracts must contain a clause that "[e]xpressly excludes from the operation of the Disputes clause any disagreement by the contractor concerning the amount of the award fee." The contract between Burnside-Ott and the Navy . . . contained the required portions of Clauses H-20 and H-21. Neither the RFP nor the contract, however, contained any method or chart for converting performance ratings to award fees (i.e., converting scores to money). The FDO thus selected a conversion method that had been used on other CPAF contracts, which awarded fees from zero percent to 100 percent of the award pool spread linearly over performance ratings from 60 to 100 at a rate of 2.5 percent of the potential award fee per rating point. Under this method, Burnside-Ott would only receive an award fee for performance that received a rating greater than 60 (i.e., that was better than "Submarginal."

Neither Burnside-Ott nor any other offeror ever questioned the Navy before the contract was awarded regarding the method for conversion of performance ratings into award fee percentages covered by the contract. Burnside-Ott believed the contract required a "1-to-1" method for calculating award fees. Under Burnside-Ott's interpretation, the contract would result in award fees from zero to 100 percent of the award pool spread linearly over performance ratings from 0 to 100 at a rate of one percent per rating point. As an example, under the "1-to-1" conversion method, a performance rating of 80 would result in an award fee of 80 percent of the award pool. Under the method used by the FDO, in contrast, a rating of 80 would only result in an award fee of 50 percent of the award fee pool (80 less 60, multiplied by 2.5 percent). Burnside-Ott completed the contract on September 30, 1993, earning an average performance score of 93.65 and receiving 84.15 percent of the available award fee pool, instead of the 93.65 percent of the pool to which it felt it was entitled under its "1-to-1" conversion method.

Burnside-Ott disputed the award fee determination method used by the FDO throughout the performance of the contract, [complaining] to the Contracting Officer (CO) that the imposition of a conversion chart to calculate award fees was "without contractual basis." The CO replied to the complaints, asserting that the FDO had acted properly in using a conversion chart to determine the award fees. Burnside-Ott submitted a certified claim to the CO, dated April 8, 1991, seeking additional award fees based on a "1-to-1" conversion formula. The CO responded to the claim on June 11, 1991, by repeating the government's earlier position and stating: "the determination of award fee is excluded from the Disputes clause and . . . there is no right to appeal such

determinations." Burnside-Ott filed a timely appeal to the Board.

Before the Board, the government moved to dismiss, arguing that the Board (had no) jurisdiction to hear the dispute. The Board concluded that it had jurisdiction, but that the extent of its review was limited to ascertaining whether the CO acted arbitrarily or capriciously in approving the FDO's conversion method. The Board held that the CO and FDO acted reasonably and within their discretion, and violated no contractual, statutory, or regulatory requirements. The Board also held that Burnside-Ott's interpretation of Clause H-21 was inconsistent with prior practice and with the purpose of award fee contracting; the Board thus concluded that Burnside-Ott was required to call the inconsistency to the government's attention before taking advantage of any ambiguity in the clause. . . .

Coming to the merits of this [U.S. Court of Appeals] case, Burnside-Ott argues that it relied on a reasonable interpretation of a latently ambiguous contract. It contends that before the contract, it had seen many other RFPs that included conversion charts. Thus, when it received the RFP without a conversion chart in this case, it simply assumed that the contract would not use a conversion chart and would instead utilize a "1-to-1" conversion between the performance rating and the percentage of award fee. Burnside-Ott asserts that its reading of the RFP was reasonable because the elimination of the conversion chart on the RFP gave the solicitation a different meaning than the other RFPs which included conversion charts.

The government in turn argues that the Board properly determined that the FDO's award fee determinations were reasonable. It asserts that the lack of a conversion formula in the contract is consistent with the contract provision in H-21 that the fee is to be determined unilaterally by the FDO, and that the use of conversion charts or "1-to-1" ratios in other contracts did not preclude the use of a conversion chart here. Finally, the government contends that to the extent there was an ambiguity in the contract, it was patent, thus requiring inquiry on the part of Burnside-Ott.

On review, "the decision of the agency board on any question of law shall not be final or conclusive." A contract must be interpreted as a whole in a manner that gives reasonable meaning to all its parts and avoids conflicts in, or surplusage of, its provisions. A contract term is ambiguous if it is susceptible to more than one reasonable interpretation.

If the contract language is latently ambiguous, the contractor is entitled to recovery based on a reasonable interpretation of the

contract. If the contract language is patently ambiguous, however, the contractor must inquire about the ambiguity before bidding. By failing to inquire, the contractor forfeits the opportunity to rely upon its unilateral, uninformed interpretation and bears the risk of misinterpretation.

We agree with the government that there is no ambiguity in the contract and that the FDO here had the authority to act unilaterally. Burnside-Ott cannot point to any part of the contract that requires the award fee to correspond directly with the performance rating. Indeed, the text of Clause H-21 unmistakably grants unilateral discretion to the government to determine the award fee. The choice of conversion method was left by contract to the FDO and should not be disturbed by the Board or by this court unless the CO's affirmance of the FDO's decision was arbitrary or capricious. There is no evidence of record to show that the CO acted arbitrarily or capriciously. Therefore, the decision of the Board is affirmed.



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH DEVELOPMENT AND ACQUISITION
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

MAR 05 1997



REPLY TO
ATTENTION OF

21 FEB 1997

SARD-PI

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Savings from Acquisition Reform

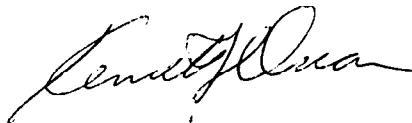
Faced with current resource constraints and future unfunded requirements to equip and maintain Force XXI, we all have attempted to determine where further savings can be achieved. Early last year I advised the Army's Chief of Staff that Acquisition Reform Initiatives can offer significant savings which could be used to minimize funding shortfalls. One of those initiatives is the use of the Government-wide Commercial Purchase Card which creates efficiencies in the Acquisition Process.

In order to advise the Chief of the potential savings with the card's use, last March I requested the U.S. Army Audit Agency (AAA) perform a cost savings study. The results of that study are in the AAA Audit Report Number AA 97-58, dated January 7, 1997 (enclosed), subject above. I am now forwarding that study for your use as a tool in assessing where you may find additional savings within your organizations. Of the average savings of \$92 when the card is used in lieu of a purchase order, the customer (if cardholder) saves \$10, the resource management directorate saves \$18, the logistics directorate saves \$21 and the contracting directorate saves \$43. Please take note of the report's AAA comments that the overall savings did not consider the additional workload the contracting function has assumed in agency program coordinator responsibilities such as cardholder training, oversight and files maintenance. Program coordinators at many activities have become full time positions due to the size of and emphasis placed on the program by Army staff elements.

I advised the Contracting Functional Area Assessment of the audit's results. Many of you already reduced contracting positions, such as purchasing agents, due to efficiencies and economies the program has already offered. The contracting FAA has programmed further savings resulting from additional increased use of the card as we move towards

the Chief's goal of 90 percent. One concern I have is that some activities have merely "shifted" the small purchase responsibility from the contracting shops to another functional area with the establishment of centralized purchasing locations. This violates the intent of the card recommendations in the National Performance Review and Executive Order 12931 which state that the card should be issued to user organizations.

It is not often we are provided tools such as this which make it easier to determine the appropriate organizations from which to reduce or increase manpower resources. I urge you to review the report and use it in determining current and future manpower strength decisions.



Kenneth J. Oscar
Deputy Assistant Secretary of the Army
(Procurement)

Enclosure

DISTRIBUTION:

Assistant Deputy Chief of Staff for Acquisition, HQ, U.S. Army Materiel
Command, ATTN: AMCRDA-A, 5001 Eisenhower Avenue, Alexandria,
VA 22333-0001

Commander, U.S. Army Aviation and Troop Command, ATTN: AMSAT-G,
4300 Goodfellow Boulevard, St. Louis, MO 63120-1798

Commander, U.S. Army Chemical and Biological Defense Command,
ATTN: AMSCB-CG, Building E4470, Aberdeen Proving Ground, MD
21010-5423

Commander, U.S. Army Communications-Electronics Command, ATTN:
AMSEL-CG, Fort Monmouth, NJ 07703-5000

Commander, U.S. Army Missile Command, ATTN: AMSMI-CG, Redstone
Arsenal, AL 35898-5000

Commander, U.S. Army Tank-Automotive and Armaments Command,
ATTN: AMSTA-CG, Warren, MI 48397-5000

Commander, U.S. Army Test and Evaluation Command, ATTN: AMSTE-
CG, Aberdeen Proving Ground, MD 21005-5055



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HEADQUARTERS UNITED STATES ARMY FORCES COMMAND
1777 HARDEE AVENUE SW
FORT MCPHERSON GEORGIA 30330-1062
May 9, 1997

REPLY TO
ATTENTION OF

AFLG-PR (715)

DELEGATION OF AUTHORITY TO APPROVE CONTRACT AWARDS AND
CONTRACTS FOR EXPERT, CONSULTANT, AND
STENOGRAPHIC REPORTING SERVICES

1. DELEGATION:

In accordance with authority vested in me by AFARS 37.104-90-2, I hereby delegate to the FORSCOM Principal Assistant Responsible for Contracting and to the Directors of Contracting at Forces Command installations the authority to approve contract awards and contracts (including extensions, renewals, and modifications, thereof) for:

a. Stenographic reporting services in connection with administrative hearings for which verbatim records are required either by regulation or by order of the board's appointing authority.

b. Expert personal services of actors, narrators, and other technical and professional personnel and production staff necessary in connection with stage, motion picture, or television production.

c. The services of interpreters, guides, and drivers for performance outside the United States in support of:

(1) A contingency operation as defined in Army Federal Acquisition Regulation Supplement Manual Number 2, Contingency Contracting; or

(2) A humanitarian or peacekeeping mission.

2. LIMITATIONS:

a. The contracting officers shall:

(1) Award contracts for the services described in paragraph 1 in accordance with the procedures in the Federal

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Acquisition Regulation (FAR), the Department of Defense and Army
FAR Supplements, and AR 5-14 regarding contracts for personal
services;

(2) Make a written determination that a non-personal
services contract is impracticable before exercising the
authorities delegated herein;

(3) Include in each contract file an approved
Determination and Findings (D&F), or copy of a class D&F, in
compliance with AFARS 37.104-90-2. In the case of a class D&F,
also include a statement of applicability;

(4) Obtain legal review of all proposed contract
actions to be awarded under the authority of this delegation.

b. This authority shall not be further delegated.

3. PERIOD OF DELEGATION:

This delegation is in effect until specifically rescinded or
superseded.



DAVID A. BRAMLETT
General, USA
Commanding

**AUDIT OF INTERNATIONAL MERCHANT
PURCHASE AUTHORIZATION CARD**

AUDIT PROGRAM

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AUDIT OF INTERNATIONAL MERCHANT PURCHASE AUTHORIZATION CARD

AUDIT PROGRAM

PART I - INTRODUCTION

PURPOSE:

To provide Internal Review (IR) Offices background and recommended audit steps to use during audits of International Merchant Purchase Authorization Cards (IMPAC). Internal Review Offices should use this program, subject to any modifications the local commander deems necessary, during audits of IMPAC.

SOURCES:

1. Federal Acquisition Regulation (FAR), Part 13.
2. Army FAR, Part 13.
3. Army Regulation 710-2, Inventory Management Supply Policy Below the Wholesale Level.
4. Army Regulation 11-2, Management Control.
5. Army Regulation 215-4, Nonappropriated Fund Contracting.
6. Defense Finance and Accounting Service Indianapolis Center Regulation (DFAS-IN 37-1).
7. General Service Administration (GSA)'s Governmentwide Commercial Credit Card Service, Contract Guide GS-23F-94031, Oct 95.
8. Army Regulation 420-18
9. Army Regulation 735-5
10. Army Regulation 725-50

11. Deputy Assistant Secretary of the Army (Financial Operations) Policy Letter,
Subject: Funding and Obligation Instructions for Micropurchases Using the
International Merchant Purchase Authorization Card (IMPAC), dated 16
September 1996.

OVERALL OBJECTIVE: The overall objective of the audit is to ensure proper management controls are maintained over the authorization and use of IMPAC and the supplies, services and materials procured with it.

SCOPE: Internal Review Offices should determine the audit scope, sample size, and audit standards required based upon the type of audit or service to be performed, i.e., full scope, quick response, or consulting service.

BACKGROUND: The IMPAC is a government-wide commercial credit card that nonprocurement personnel may use as a purchase and payment instrument for micro purchases (\$2,500 and less; \$2,000 for construction) of approved supplies and services. It is applicable to both appropriated and nonappropriated funds. Using the purchase card in lieu of purchase orders saves the Army approximately \$93 in direct labor costs for each order processed. To encourage maximum use of the card, the Army Chief of Staff (CofS) established a goal that 90 percent of all micro purchases be made using the IMPAC.

Procurement personnel with appropriate training and experience may be authorized to use the card up to \$999,900 for payment purposes when all statutory and regulatory requirements are met.

The card is intended to reduce contracting, supply and finance workload and backlog associated with acquisition, as well as pay vendors immediately. The card has built-in safeguards and management controls to minimize misuse. The safeguards include a monthly and single purchase dollar cap assigned to the card. There is also a safeguard that allows purchase restrictions to certain vendors via use of merchant activity codes encoded in the card.

Before an activity can locally procure supplies and services, it must determine if it can acquire them through the sources listed in Part 8 of the FAR. The sources include, in order of preference; local inventories, Federal Prison Industries, National Industries for the Blind and Severely Handicapped, and National Inventories. Cardholders shall keep records of all transactions, to include: who the purchase is for, date of order, vendor name, price paid, and when received.

Each month, the bank will send a Billing Statement directly to the card holder. The card holder must reconcile the statement with the receipts (kept on file) and forward the statement to the approving official for review against the official Billing Statement. The Approving Official will certify the Billing Statement, then forward the certified statement to the Finance Office for payment. The Approving Official will retain the original cardholder Statements of Account and a copy of the certified Billing Statement for a period of three years.

PART II - PREPARATION FOR AUDIT:

1. Obtain and Review:

- Governmentwide Commercial Credit Card Service Contract Guide, GS-23F-94031, Oct 95, published by GSA.
- DFAS-IN 37-1, Chap 20.
- Local Directorate of Contracting policy.
- Government-wide Purchase Card Program Army Update Training Guide.

2. Contact IG, SJA, CID for information applicable to IMPAC.

3. Determine if the Command Supply Discipline Program includes evaluations of IMPAC purchases.

4. Contact your Management Control Administrator to determine if any material weaknesses were reported, past evaluations performed, and future evaluations planned.

PART III - AUDIT OBJECTIVES AND STEPS:

1. **Objective:** To determine the adequacy of administrative oversight procedures.

Audit Steps:

Auditor W/P

Initial

- a. Determine who decides the number of cards needed, designated cardholders, and designated approving officials
- b. Determine who establishes credit card limitations for each cardholder (single purchase and monthly) and if they have been coordinated with the Resource Manager.
- c. Determine if cardholders received at least four (4) hours of training.
- d. Determine who is designated as the agency program coordinator to function as the primary liaison with the credit card contractor.
- e. Determine if management information reports (available from First Bank) are used to evaluate card usage.
- f. Determine if property book officers have issued hand receipts for nonexpendable pilferable and/or sensitive property purchased with the card.
- g. Determine adequacy of procedures to retrieve cards when personnel are reassigned or leave the work force.

Audit Steps:

Auditor W/P

Initial

h. Determine the adequacy of procedures to safeguard cards and account numbers.

i. Determine controls established to report lost or stolen IMPAC cards.

j. Determine if disputed charges and billing errors are:
- paid in accordance with "delayed dispute" procedures
- resolved with all parties involved.
- are credited on a future billing.

k. Determine if the organization is monitoring use of the card to meet the Army CofS goal that 90 percent of all micro purchases be made using the IMPAC card.

l. Determine if relationships between card holders, approving officials, certifying officers, and hand receipt holders represent conflicts of interest.

J. Determine if Resource Managers post bulk obligations or commitments for card purchases as described in the DASA(FO) 16 September 1996 Memorandum.

2. **Objective:** Determine if credit card holders are making authorized purchases and properly accounting for all items received.

Audit Steps:

Auditor W/P

Initial

a. Determine if cardholders satisfy requirements for supplies and services through order preference as listed in the GSA contract guide, pages 9 and 10.

b. Determine if local procedures for making purchases are more restrictive than procedures recommended by DA and / or DOD and why.

c. Determine if other purchase methods for items under \$2,500 are used instead of the IMPAC and if so why.

d. Determine if local purchases comply with regulatory guidance and local operating procedures.

e. Determine if card holders maintain records of purchases.

f. Determine if cardholders reconcile the statement of account each month

g. Determine if nonexpendable items purchased are physically on-hand. This can be accomplished by taking a sample of card holder receipts and verifying the items are present.

h. Determine if there is an audit trail that includes item receipts and detailed invoices to support purchases.

Audit Steps:

Auditor W/P

Initial

i. Determine if items purchased were shipped within 30 days. Cardholders are responsible for informing the vendor that charges for items can only be placed on the card when shipped.

j. Determine if cardholders inform the merchant not to display card numbers on packing slips when purchases are made by telephone.

k. Determine if cardholders used split purchases to avoid single purchase limits. (\$2500 for supplies and services; \$2000 for construction.)

l. Determine if purchases include state or local taxes. Official government purchases are not subject to these taxes in most locations.

m. Determine if cardholders are familiar with procedures to follow in case their card is lost or stolen.

n. Determine if card holders maintain an accurate record of unresolved disputed purchases.

3. **Objective:** Determine if approving officials adequately review, approve, and certify for payment items purchased by cardholders.

Audit Steps:

Auditor W/P

Initial

a. Determine if approving officials maintain and are familiar with regulatory and local guidance concerning IMPAC cards.

b. Determine if approving official has been delegated certification authority and that the appropriate signature card is on file at the paying office.

c. Determine if approving officials are verifying, approving, and certifying monthly purchases made by the card holders.

d. Determine if procedures are in place and used to resolve improper uses of cards.

e. Determine if procedures are in place and used to transfer cardholders from one Approving Official to another Approving Official if necessary.

f. Determine if approving officials check to see if hand receipts have been issued for accountable property.

f. Determine if approving officials stamp the date of receipt on the official Billing Statement.

g. Determine if approving officials are maintaining the original card holder Statements of Account and a copy of the certified Billing Statement for three years.

Audit Steps:

Auditor W/P

Initial

h. Determine how certified Billing Statements are forwarded to the Finance Office to ensure timely payment (15 calendar days after receipt).

i. Determine effect of late payments, if any.

4. Objective: Evaluate the effectiveness of the paying office

Audit Steps:

Auditor W/P

Initial

- a. Determine if paying office date stamps receiving date of certified Billing Statement from approving official.
- b. Determine if paying office receives certified invoice within 15 calendar days of statement date.
- c. Determine how paying office calculates prompt payment interest due.
- d. Verify that paying office notifies the bank of official billing statement receipt date.
- e. Verify that activity has provided a prompt pay interest fund cite for each approving official.
- f. Verify that the paying office made payment within the Prompt Payment Act window (23-30 days from date of receipt by approving official).

5. **Objective:** Evaluate the implementation of the Management Control Process as it relates to IMPAC.

Audit Steps:

Auditor W/P

Initial

a. Review the Army Inventory of Functions Requiring Management Control Evaluations to determine if the audited area is included.

b. Review the 5-year plan to determine whether the audited area is included.

c. Review the latest management control evaluations made in the audited area, to determine whether controls are in place, being used as intended, and effective in achieving their purpose. Also, determine whether a DA Form 11-2-R was completed certifying the evaluation.

d. Determine if there were weaknesses identified as a result of a management control evaluation for the audited area.

- If weaknesses were detected, were they evaluated as potential material weaknesses and reported at the appropriate command level.

- Were material weakness corrective action milestone plans developed and tracked through completion.

- Were they properly completed.

PART IV - DEFINITION OF TERMS:

1. **International Merchant Purchase Authorization Card. (IMPAC).** The IMPAC initials will appear on the government credit card and on most forms. The contractor who will maintain all IMPAC accounts is First Bank, Inc.
2. **Approving Official. (AO)** The individual within a directorate or activity who may certify the Cardholder's monthly "statement of Account" and ensure that payments are for purchases which are authorized and made in accordance with FAR and agency regulations. The Approving Official should be within the Cardholder's direct chain of command.
3. **Cardholder. (CH)** The individual within a directorate or activity to whom a card is issued and procurement authority is delegated. The card bears the Cardholder's name and may only be used by this individual for authorized U.S. Government purchases.
4. **Agency Program Coordinator. (APC)** The individual in the organization responsible for maintaining an up-to-date list of all cardholders names, addresses, account numbers and telephone numbers. This individual may determine who the approving officials and the cardholders will be.
5. **Finance Office Contact.** Individuals in Finance Office responsible for payment of each monthly Billing Statement after certification by an Approving Official.
6. **Dispute Office Contact.** Dispute office contacts (usually the APC) will coordinate, process, and monitor all disputed purchases, credit or billing errors, after efforts by the Cardholder and Approving Official have not been successful.
7. **Statement of Accounts. (SOA)** A monthly listing of all charges made by the cardholder, billed by the IMPAC merchant, First Bank, Inc.
8. **Certifying Officer.** The person, normally the Approving Official, that certifies the official Billing Statement as appropriate for payment.

PART V - UNAUTHORIZED USE:

1. The card shall not be used for the following:

- Cash advances.
- Rental or lease of land or buildings.
- Telecommunications (FTS 2000) service.

2. The card shall not be used for the following unless individual agencies warrant such use:

- Purchase of official meals, drinks, lodging, or other travel costs. (Except where AMEX is not applicable).
- Purchase of airline, bus, or travel related tickets.
- Purchase of gasoline, oil, or repairs for interagency fleet management vehicles.
- For printing or copying services unless purchased from the Defense Automated Printing Service (DAPS).
- To pay an unauthorized procurement after ratification.

PART VI - POTENTIAL PROBLEMS:

- First Bank reports do not show descriptions of items purchased.
- Credit cards are not safeguarded.
- Credit card holders did not receive training.
- Inadequate oversight by approving officials.
- Unauthorized purchases.
- Payments made for items not received.
- Split purchases to avoid credit card limitations.

- Purchase of nonexpendable pilferable or sensitive items not accounted for on property books.

- Late forwarding of approved copies of the statements to Finance resulting in interest payment penalties.

- Cardholders statements approved by someone other than the approving authority.

- Not taking advantage of incentives offered for early payment, electronic receipt of invoices, reports.

PART VII - SUGGESTIONS FOR IMPROVEMENT:

We envision that this guide will need to be periodically updated and revised. Please send your suggestions to :

Office of the Deputy Assistant Secretary (Financial Operations)
ATTN: SAFM-FOI, Mr. Bob Barnhart
109 Army Pentagon, Room 3E575
Washington, DC 20130-0109